IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7280 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJAY HASABHAI KHAWAS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7280 of 2001

MS SUMAN PAHWA for Petitioner

MRS HANSABEN PUNANI, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/11/2001

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 10-5-2001 passed by the Police Commissioner, Rajkot City, Rajkot.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the authority has relied upon two offences, one is of 26-2-1999 and second is of 21-3-2001 and order of detention has been passed on 10-5-2001 and hence, there is a delay in passing the order. Learned AGP has fairly admitted the same. He has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that last offence registered against the petitioner was dated 21-3-2001 and order of detention was passed on 10-5-2001 based on this offence and hence,

there is a delay in passing the order. No affidavit has been filed by the detaining authority explaining satisfactorily the delay caused in passing the order of detention. It has been held in a judgment delivered by a Division Bench of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

Since no affidavit has been filed either by the detaining authority or the State and also since the delay in passing the order has not been properly explained, order of detention is illegal and same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 10-5-2001 passed against the detenu is hereby quashed. The detenu-Sanjay Hasabhai Khavas is set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

RADHAN/